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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/033,713

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EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/033,713

Applicant(s)

WEI, ZHANG SHAO

Examiner

Jack H. Morgan

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-37 and 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-37 and 40-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Applicant incorrectly refers to 37 CFR "1.56(a)".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 32, 34, 35, 42-44, 46 and 48-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 5,409,144). Brown discloses a flexible container for liquid cleanser (Fig 17) having two flexible members (12a, large flat sides) having a modulus of elasticity conducive to liquid containment and gaseous inflation, the chamber containing liquid cleanser, specifically, liquid soap (18a, abstract) and a flexible closure (Figs 4-16) having a hollow cylinder (Fig 17, 7a), having an open first

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end (6a), and an open second end (at 4a) coupled to the flexible members (2) for repetitive filling and expelling of liquid cleanser (18) in response to squeezing force applied to the members and a stopper (Fig 16, 71) to seal the hollow cylinder, the container further comprising a hanger (Fig 17, 80). Based on applicants remarks of December 5, 2006, it is well settled that soap is an emulsifier (page 10), therefore, Brown discloses a liquid emulsifier. Brown further discloses the flexible members forming a chamber having a recognizable shape, specifically a geometric shape, rectangular. The closure of Brown is a retractable valve cylinder (7a, see Fig 4-16) having a second end (6a) of the flexible closure that is sealed and extends into the chamber, having a transfigurable slit (Fig 4, 55 and 56) disposed near the end for fluid exchange in response to a squeezing force applied.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,409,144) in view of Besse et al. (US 5,810,201). Brown discloses all the limitations of the claims, including a hanger attached to the flexible members, but does not disclose the flexible members formed of vinyl material. Besse et al. disclose a similar container which holds liquid soap (Fig 2, 21) which is created from polyvinyl

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chloride (Col 6, line 3), which is a well known flexible plastic. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Brown out of polyvinyl chloride as taught by Besse et al. as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

4. Claims 36, 37, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,409,144) in view of Haugk et al. (US 5,937,554). Brown discloses all the limitations of the claims except for an insert suspended in the liquid cleanser, of a predetermined size that prevents expulsion of the insert from the container via the flexible closure. Haugk et al. disclose a container with a film insert in the container, and unattached to any interior surface, in a similar container as those known in the art to be used for liquid soaps and other cosmetics in order to add a three dimensional decorative design to the container. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Brown with the insert of Haugk et al. in order to add a three dimensional decorative design to the interior of Brown's container.

5. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,409,144) in view of Flackett et al. (US 6,343,712). Brown discloses all the limitations of the claim except for the recognizable shape being an animal shape.

Flackett et al. disclose a liquid dispenser for use with liquid soap, having a similar closure design (Fig 6, 32) to Brown which is formed in the shape of an animal (specifically, a lizard) as a decorative feature. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Brown in the animal shape taught by Flackett et al. in order to improve the aesthetic qualities of the liquid soap dispenser.

6. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,409,144) in view of Henning et al. (US 3,623,638). Brown discloses all the limitations of the claim except for the recognizable shape being a flower design. Henning et al. disclose a liquid dispenser for use with liquid soap (Fig 1) that is formed in the shape of a flower (12) (specifically, a sunflower) as a decorative feature. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the container of Brown in the flower shape taught by Henning et al. in order to improve the aesthetic qualities of the liquid soap dispenser.

Response to Arguments

Applicant's arguments filed August 9, 2007 have been fully considered but they are not persuasive.

7. In regards to Brown (US 5,409,144) being used as a 102(b) with respect to claims 32, 34, 35, 42-44, 46 and 48-51:

8. Applicant argues that Brown does not disclose a container composed of two flexible members. Brown discloses a container disclosed of two members (in that his unitarily constructed container has two sidewalls) insofar as applicants claims set forth the structure of a "member".

9. Applicant argues that Brown teaches away from the use of a collapsible bag, however applicant's arguments cite one embodiment of Brown as teaching away from an alternative embodiment of Brown. In actuality, Brown teaches both a collapsible bag and a resiliently shaped bag.

10. Applicant argues that the collapsible bag of Brown has a rigid base, which the applicant's invention lacks. While this is true, Brown still discloses a flexible closure mechanism, with regard to the moving sections (6) of the Brown invention, meeting applicant's claimed limitations.

11. Applicant argues that Brown does not disclose the use of the container for gaseous inflation. Applicant's claims set forth the limitation "said flexible members have a modulus of elasticity conducive to liquid containment and gaseous inflation". Examiner argues that in regards to the modulus of elasticity, the flexible members of Brown are conducive to liquid containment and gaseous inflation, as they would not rupture at ambient pressure (Examiner further notes that "gaseous inflation need not pressurize the bag). As such, Brown meets applicants claimed limitations.

12. Applicant argues that Brown does not disclose an open end, but a valve end that only opens under pressure. However, when the valve of Brown is open, there is an open end, meeting the limitations of applicant's claims.

13. Applicant argues that Brown does not have a stopper to seal the hollow cylinder, instead disclosing a removable cap, and that the stopper is not necessary to seal the dispensing valve. While the removable cap may not be necessary to seal the valve, it does provide a further seal for the cylinder. In addition, as set forth in Brown (Col 16, lines 20-28) the cap prevents the motion of the valve outward (its open position) in order to "securely maintain the orifice 6 fully closed" (Col 16, lines 27-28). As such, the removable cap of Brown clearly operates as a stopper.

14. In regards to applicants arguments regarding 103(a) rejection, applicant merely argues that due to the inapplicability of Brown, the further rejections are fatally flawed. Examiner has addressed such arguments above in the Brown response.

15. In regards to the evidence of commercial success provided in the Supplemental Response of March 2, 2007, examiner carefully reviewed the evidence relating to the non-obviousness of the claimed invention prior to the previous action, but as all independent claims were (and still are) rejected under 35 USC 102, the question of non-obviousness of the claims is moot.

The response refers specifically to a two-piece flexible container with a valve that contains and dispenses liquid soaps and cleaners (Vernor, Page 3, lines 1-2), and "a flexible container having a flexible closure or valve having a stopper attached thereto" (Slaboden, Page 2, line 5), the claimed subject matter that is currently rejected under 102(b) by Brown.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Viegas (US 5,307,955) and Graham (GB 2,283,077).

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

"define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER